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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
08/601,803	02/15/96	WRIGHT	J WRIGHT-204

EXAMINER	
LACY, J	

ART UNIT	PAPER NUMBER
3311	6

DATE MAILED: 10/15/97

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

- ☐ Responsive to communication(s) filed on _____
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1-14 is/are pending in the application.
Of the above, claim(s) _____ is/are withdrawn from consideration.
- ☒ Claim(s) 3 is/are allowed.
- ☒ Claim(s) 1-2, 4-14 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☒ Notice of Reference Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s) _____
- ☐ Interview Summary, PTO-413
- ☒ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

--SEE OFFICE ACTION ON THE FOLLOWING PAGES--

The disclosure is objected to because of the following informalities: Page 1 of the specification is missing; on page 6, lines 20-29, disclose a vacuum chamber however there are no reference numbers to identify in the drawings where the chamber(s) are located on the device; on page 7 the specification discusses element 24, however this element is not shown in the drawings. Appropriate correction is required.

Claims 1-2, 4-14 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 appears to be incomplete in that the device needs to create a vacuum with the heart in order for the device to properly immobilize the portion of the heart. Therefore such language needs to be in the claim in order for the claim to be complete. In claim 4, "the minor dimension of the cardiac immobilizing member" lacks positive antecedent basis. In claims 5 and 11 "adapted to" language should be used to avoid claiming a positive connection to the body and thereby claiming part of the body.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States

before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claim 1 is rejected under 35 U.S.C. § 102(e) as being anticipated by Kazama. Kazama discloses a device used to support a heart during coronary bypass surgery. The device is used to hold the heart steady thereby immobilizing it by securing it to the heart.

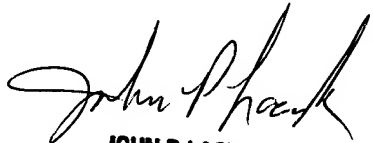
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Wright is cited to further show the state of the art.

Claim 3 is allowable over the prior art of record. Claims 2, 4-14 would be allowable if rewritten to overcome the rejection under 35 U.S.C. 112 and to include all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication should be directed to John P. Lacyk at telephone number (703) 308-2995.

J.P. Lacyk:lf
September 25, 1997


JOHN P. LACYK
PRIMARY EXAMINER